

House Engrossed Senate Bill

State of Arizona  
Senate  
Forty-seventh Legislature  
First Regular Session  
2005

CHAPTER 199

## **SENATE BILL 1252**

AN ACT

AMENDING SECTIONS 32-1104 AND 32-1154, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 10, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-1151.02; RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1104, Arizona Revised Statutes, is amended to  
3 read:

4 32-1104. Powers and duties

5 A. The registrar, in addition to other duties and rights provided for  
6 in this chapter, shall:

7 1. Maintain an office in Phoenix and in such other cities and towns in  
8 the state as the registrar deems advisable and necessary.

9 2. Maintain a complete indexed record of all applications and licenses  
10 issued, renewed, terminated, cancelled, revoked or suspended under this  
11 chapter, including timely notation of any judicial disposition on appeal, for  
12 a period of not less than seven years.

13 3. Furnish a certified copy of any license issued or an affidavit that  
14 no license exists or that a license has been cancelled or suspended including  
15 information as to the status on appeal of such cancellation or suspension,  
16 upon receipt of the prescribed fee, and such certified copy shall be received  
17 in all courts and elsewhere as prima facie evidence of the facts stated  
18 therein. The registrar shall also furnish certified copies of license bonds  
19 or cash deposit certificates upon receipt of the prescribed fee. Fees  
20 charged pursuant to this paragraph shall be at a rate of ten dollars per  
21 hour, except that the minimum fee charged pursuant to this paragraph shall be  
22 ten dollars.

23 4. Employ such deputies, investigators and assistants and procure such  
24 equipment and records as are necessary to enforce this chapter. With respect  
25 to the enforcement of section 32-1164, the registrar or the registrar's  
26 investigators are vested with the authority to issue a citation to any  
27 violators of this chapter in accordance with section 13-3903. When the  
28 registrar or the registrar's investigators conduct investigations they are  
29 authorized to receive criminal history record information from the department  
30 of public safety and other law enforcement agencies.

31 5. Make rules the registrar deems necessary to effectually carry out  
32 the provisions and intent of this chapter. Such rules shall include the  
33 adoption of minimum standards for good and workmanlike construction. In the  
34 adoption of such rules of minimum standards, the registrar shall be guided by  
35 established usage and procedure as found in the construction business in this  
36 state. If the rules of minimum standards adopted by the registrar are in any  
37 manner inconsistent with a building or other code of the state, a county,  
38 city or other political subdivision or local authority of the state,  
39 compliance with such code shall constitute good and workmanlike construction  
40 for the purposes of this chapter.

41 6. Apply the following to proposed rule changes:

42 (a) The registrar of contractors shall, at the time the registrar  
43 files notice of proposed rule change with the secretary of state in  
44 compliance with title 41, chapter 6, mail to each trade association that  
45 qualifies in accordance with subdivision (b) of this paragraph, and any other

1 individual holding a bona fide contractor's license who qualifies in  
2 accordance with subdivision (b) of this paragraph, a copy of the notice of  
3 proposed rule change.

4 (b) Every trade association in this state allied with the contracting  
5 business that files a written request that a notice be mailed to it and shows  
6 that the association has an interest in the rules of the registrar of  
7 contractors shall receive a copy thereof, as set forth in subdivision (a) of  
8 this paragraph. Such filing of a request shall be made every two years  
9 during the month of January, and it shall contain information as to the  
10 nature of the association and its mailing address. Any duly licensed  
11 contractor who files a written request shall receive a copy of the proposed  
12 rule changes in accordance with this paragraph. Each such request shall be  
13 made every two years during the month of January.

14 7. Prepare and furnish decals and business management books when  
15 deemed advisable by the registrar. A reasonable fee may be charged for such  
16 decals and business management books.

17 8. REFER CRIMINAL VIOLATIONS OF THIS CHAPTER COMMITTED BY PERSONS  
18 PREVIOUSLY NAMED ON A LICENSE WHICH HAS BEEN REVOKED TO THE APPROPRIATE LAW  
19 ENFORCEMENT AGENCY OR PROSECUTING AUTHORITY.

20 B. The registrar may develop and institute programs to do any of the  
21 following:

22 1. Educate the public and contractors licensed pursuant to this  
23 chapter regarding statutes, rules, policies and operations of the agency.

24 2. Assist in the resolution of disputes before a reportable written  
25 complaint is filed.

26 3. Develop, manage, operate and sponsor construction related programs  
27 designed to benefit the public in conjunction with other private and public  
28 entities.

29 C. The registrar may adopt rules for the posting of names of  
30 applicants and personnel of applicants for contractors' licenses and furnish  
31 copies of such posting lists upon written request. The name and address of  
32 the applicant, together with the names and addresses and official capacity of  
33 all persons associated with the applicant who have signed the application,  
34 shall be publicly posted in the place and manner to be prescribed by the  
35 registrar for a period of not less than twenty days, except as otherwise  
36 provided in this subsection, commencing on the day designated by the  
37 registrar of contractors. The registrar may waive a part of the posting  
38 period when the records reflect that the applicant or qualifying party has  
39 previously undergone the twenty day posting for a previous license. A  
40 reasonable charge of not to exceed two dollars per month may be made for  
41 compilation, printing and postage for such posting lists.

42 D. The registrar may accept voluntary gifts, ~~grant~~ GRANTS or matching  
43 monies from public agencies or enterprises for the conduct of programs that  
44 are authorized by this section or that are consistent with the purpose of  
45 this chapter.

1       Sec. 2. Title 32, chapter 10, article 3, Arizona Revised Statutes, is  
2 amended by adding section 32-1151.02, to read:

3       32-1151.02. list of unlicensed contractors; cease and desist  
4                   orders; web site publication

5       A. THE REGISTRAR SHALL MAINTAIN A LIST OF PERSONS WHO HAVE BEEN  
6 CONVICTED OF CONTRACTING WITHOUT A LICENSE IN VIOLATION OF SECTION 32-1151 OR  
7 ADMINISTRATIVELY ADJUDICATED TO HAVE BEEN CONTRACTING WITHOUT A LICENSE AFTER  
8 HAVING BEEN ISSUED A CIVIL CITATION PURSUANT TO SECTION 32-1166. THE LIST  
9 SHALL BE PUBLISHED ON THE REGISTRAR'S WEB SITE.

10       B. THE REGISTRAR SHALL REMOVE A PERSON FROM THE LIST WITHIN TEN  
11 BUSINESS DAYS WHEN THE PERSON BECOMES LICENSED PURSUANT TO THIS CHAPTER AND  
12 SUBMITS A WRITTEN REQUEST TO THE REGISTRAR REQUESTING THE PERSON'S NAME TO BE  
13 REMOVED FROM THE LIST.

14       C. IF A MEMBER OF THE PUBLIC REQUESTS A COPY OF THE LIST PRESCRIBED  
15 BY SUBSECTION A, THE REGISTRAR SHALL PROVIDE A COPY OF THE LIST.

16       Sec. 3. Section 32-1154, Arizona Revised Statutes, is amended to read:

17       32-1154. Grounds for suspension or revocation of license;  
18                   continuing jurisdiction; civil penalty; recovery  
19                   fund award

20       A. The holder of a license or any person listed on a license pursuant  
21 to this chapter shall not commit any of the following acts or omissions:

22       1. Abandonment of a contract or refusal to perform after submitting a  
23 bid on work without legal excuse for the abandonment or refusal.

24       2. Departure from or disregard of plans or specifications or any  
25 building codes of the state or any political subdivision of the state in any  
26 material respect which is prejudicial to another without consent of the owner  
27 or the owner's duly authorized representative and without the consent of the  
28 person entitled to have the particular construction project or operation  
29 completed in accordance with such plans and specifications and code.

30       3. Violation of any rule adopted by the registrar.

31       4. Failure to comply with the statutes or rules governing social  
32 security, workers' compensation or unemployment insurance.

33       5. Failure to pay income taxes, withholding taxes or any tax imposed  
34 by title 42, chapter 5, articles 1 and 4 and incurred in the operation of the  
35 licensed business.

36       6. Misrepresentation of a material fact by the applicant in obtaining  
37 a license.

38       7. The doing of a wrongful or fraudulent act by the licensee as a  
39 contractor resulting in another person being substantially injured.

40       8. Conviction of a felony.

41       9. Failure in a material respect by the licensee to complete a  
42 construction project or operation for the price stated in the contract, or in  
43 any modification of the contract.

44       10. Aiding or abetting a licensed or unlicensed person to evade this  
45 chapter, knowingly combining or conspiring with a licensed or unlicensed

1 person, allowing one's license to be used by a licensed or unlicensed person  
2 or acting as agent, partner, associate or otherwise of a licensed or  
3 unlicensed person with intent to evade this chapter.

4 11. Failure by a licensee or agent or official of a licensee to pay  
5 monies in excess of seven hundred fifty dollars when due for materials or  
6 services rendered in connection with the licensee's operations as a  
7 contractor when the licensee has the capacity to pay or, if the licensee  
8 lacks the capacity to pay, when the licensee has received sufficient monies  
9 as payment for the particular construction work project or operation for  
10 which the services or materials were rendered or purchased.

11 12. Failure of a contractor to comply with any safety or labor laws or  
12 codes of the federal government, state or political subdivisions of the  
13 state.

14 13. Failure in any material respect to comply with this chapter.

15 14. Knowingly entering into a contract with a contractor for work to be  
16 performed for which a license is required with a person not duly licensed in  
17 the required classification.

18 15. Acting in the capacity of a contractor under any license issued  
19 under this chapter in a name other than as set forth upon the license.

20 16. False, misleading or deceptive advertising whereby any member of  
21 the public may be misled and injured.

22 17. Knowingly contracting beyond the scope of the license or licenses  
23 of the licensee.

24 18. Contracting or offering to contract or submitting a bid while the  
25 license is under suspension or while the license is on inactive status.

26 19. Failure to notify the registrar in writing within a period of  
27 fifteen days of any disassociation of the person who qualified for the  
28 license. Such licensee shall have sixty days from the date of such  
29 disassociation to qualify through another person.

30 20. Subsequent discovery of facts which if known at the time of  
31 issuance of a license or the renewal of a license would have been grounds to  
32 deny the issuance or renewal of a license.

33 21. Having a person named on the license who is named on any other  
34 license in this state or in another state which is under suspension or  
35 revocation unless the prior revocation was based solely on a violation of  
36 this paragraph.

37 22. Continuing a new single family residential construction project  
38 with actual knowledge that a pretreatment wood-destroying pests or organisms  
39 application was either:

40 (a) Not performed at the required location.

41 (b) Performed in a manner inconsistent with label requirements, state  
42 law or rules.

43 23. Failure to take appropriate corrective action to comply with this  
44 chapter or with rules adopted pursuant to this chapter without valid  
45 justification within a reasonable period of time after receiving a written

directive from the registrar. The written directive shall set forth the time within which the contractor is to complete the remedial action. The time permitted for compliance shall not be less than fifteen days from the date of issuance of the directive. A license shall not be revoked or suspended nor shall any other penalty be imposed for a violation of this paragraph until after a hearing has been held.

24. Prohibit, threaten to prohibit, retaliate, threaten to retaliate or otherwise intimidate any contractor or materialman from serving a preliminary notice pursuant to section 33-992.01.

B. The registrar may on the registrar's own motion, and shall on the written complaint of any person, investigate the acts of any contractor within this state and may temporarily suspend, with or without imposition of specific conditions in addition to increased surety bond or cash deposit requirements, or permanently revoke any or all licenses issued under this chapter if the holder of the license issued pursuant to this chapter is guilty of or commits any of the acts or omissions set forth in subsection A of this section.

C. The expiration, cancellation, suspension or revocation of a license by operation of law or by decision and order of the registrar or a court of law or the voluntary surrender of a license by a licensee shall not deprive the registrar of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee, or to render a decision suspending or revoking such a license, or denying the renewal or right of renewal of such license.

D. The registrar may impose a civil penalty of not to exceed five hundred dollars on a contractor for each violation of subsection A, paragraph 23 of this section. Civil penalties collected pursuant to this subsection shall be deposited in the residential contractors' recovery fund. The failure by the licensee to pay any civil penalty imposed under this subsection results in the automatic revocation of the license thirty days after the effective date of the order providing for the civil penalty. No future license may be issued to an entity consisting of a person associated with the contractor, as defined in section 32-1101, subsection A, paragraph 5, unless payment of any outstanding civil penalty is tendered.

E. THE REGISTRAR SHALL IMPOSE A CIVIL PENALTY OF NOT TO EXCEED ONE THOUSAND DOLLARS ON A CONTRACTOR FOR EACH VIOLATION OF SUBSECTION A, PARAGRAPH 18 OF THIS SECTION. CIVIL PENALTIES COLLECTED PURSUANT TO THIS SUBSECTION SHALL BE DEPOSITED IN THE RESIDENTIAL CONTRACTORS' RECOVERY FUND. THE FAILURE BY THE LICENSEE TO PAY ANY CIVIL PENALTY IMPOSED UNDER THIS SUBSECTION RESULTS IN THE AUTOMATIC PERMANENT REVOCATION OF THE LICENSE THIRTY DAYS AFTER THE EFFECTIVE DATE OF THE ORDER PROVIDING FOR THE CIVIL PENALTY. NO FUTURE LICENSE MAY BE ISSUED TO AN ENTITY CONSISTING OF A PERSON ASSOCIATED WITH THE CONTRACTOR, AS DEFINED IN SECTION 32-1101, SUBSECTION A, PARAGRAPH 5, UNLESS PAYMENT OF ANY OUTSTANDING CIVIL PENALTY IS TENDERED.

1       E. F. Notwithstanding any other provisions in this chapter, if a  
2 contractor's license has been revoked or has been suspended as a result of an  
3 order to remedy a violation of this chapter, and the contractor refuses or is  
4 unable to comply with the order of the registrar to remedy the violation, the  
5 registrar may order payment from the residential contractors' recovery fund  
6 to remedy the violation. The registrar shall serve the contractor with a  
7 notice setting forth the amount claimed or to be awarded. If the contractor  
8 contests the amount or propriety of the payment, the contractor shall respond  
9 within ten days of the date of service by requesting a hearing to determine  
10 the amount or propriety of the payment. Failure by the contractor to respond  
11 in writing within ten days of the date of service shall be deemed a waiver by  
12 the contractor of the right to contest the amount claimed or to be awarded.  
13 Service may be made by personal service to the contractor or by mailing a  
14 copy of the notice by registered mail with postage prepaid to the  
15 contractor's latest address of record on file in the registrar's office. If  
16 service is made by registered mail, it is effective five days after the  
17 notice is mailed. Except as provided in section 41-1092.08, subsection H,  
18 the contractor or injured person may seek judicial review of the registrar's  
19 final award pursuant to title 12, chapter 7, article 6.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

**ON RECONSIDERATION**

Passed the House April 5, 2005,

Passed the Senate April 18, 2005,

by the following vote: 31 Ayes,

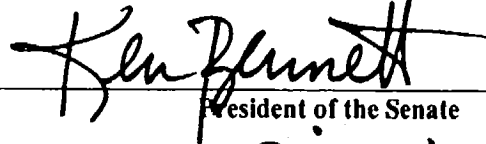
by the following vote: 21 Ayes,

17 Nays, 12 Not Voting

8 Nays, 1 Not Voting



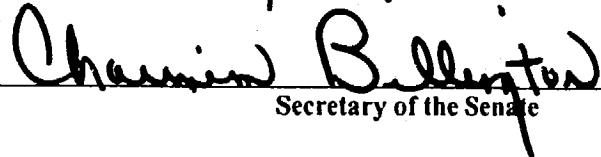
Speaker of the House



President of the Senate



Chief Clerk of the House



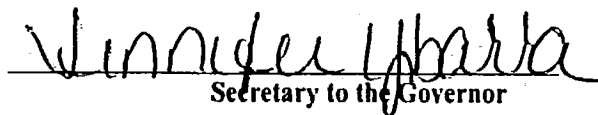
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

19th day of April, 2005

at 8:05 o'clock a. M.

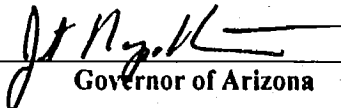


Secretary to the Governor

Approved this 25 day of

April, 2005,

at 945 o'clock A. M.



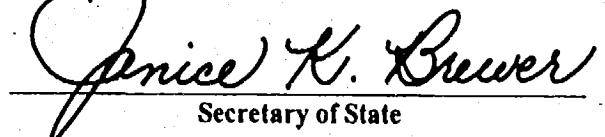
Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this 25 day of April, 2005,

at 4:33 o'clock P. M.



Secretary of State



~~Failed~~  
Passed the House April 4, 2005,

by the following vote: 30 Ayes,

26 Nays, 4 Not Voting

Speaker of the House

Norman L. Moore  
Chief Clerk of the House

Passed the Senate February 17, 2005,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

John Bennett  
Charmine B. Benton  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

S.B. 1252

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

**SENATE CONCURS IN HOUSE AMENDMENTS  
AND FINAL PASSAGE**

Passed the Senate \_\_\_\_\_, 20\_\_\_\_,

by the following vote: \_\_\_\_\_ Ayes,

\_\_\_\_\_ Nays, \_\_\_\_\_ Not Voting

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

S.B. 1252

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State